INSTRUCTOR: PETER M. MALAGUTI

INSTRUCTIONS: This is a three hour examination consisting of three (3) questions, each of which will comprise one-third (1/3) of your grade. This is not an open book examination; therefore, you may not refer to any notes, books, memoranda, etc. Please skip lines in your blue books and write clearly. You get no credit for that which I cannot read. Please attempt to address both sides of each issue and fully explain the reasons for your conclusions.

Good Luck!
QUESTIONS ONE

The Universal Krishna Fundamentalist Church ("UKFC") recently purchased a six thousand square foot building located on Hare Street, Secular, Massachusetts. The UKFC building is located in the R-1 zoning district, which permits single family residences, some limited multifamily dwellings and limited businesses provided the applicant first obtains a special permit. The Secular Zoning By-Law does not allow church related activities in the R-1 district either by right or by special permit. The articulated goal of the UKFC is to minister to and educate the poor, conduct missionary projects throughout the world and convert people to the Universal Krishna Fundamentalist religion.

The UKFC planned to convert the existing building into a shelter for the homeless and soup kitchen. The UKFC only needed to make interior repairs to effectuate its plan; it did not need to construct additional buildings or additions. The Secular Building Inspector rejected the UKFC's application for a building permit because of the proposed use and advised the church to apply for a variance. The Church complied and applied to the Secular Board of Appeals for a variance to place a shelter for the homeless and soup kitchen into a residential zone. In its application, the UKFC disclosed that the lot on which the building sat had dimensions of two hundred feet by two hundred feet. Most other lots in the zoning district had similar dimensions. The lot was fairly level, without water problems, but with large ledge deposits over the property. Not many of the neighboring lots had ledge. There are, in fact, no uses other than single family residences in the R-1 zoning district. There is a district in which church uses are permitted; but that district only covers twenty percent of the town's land area.

The Board conducted a proper hearing and only one person, Arthur Antagonist, appeared and objected. Arthur lives about five hundred feet down the street. The following points were addressed at the hearing:

1. The number of homeless people in the community has been growing dramatically in recent years.

2. The current number of shelters for the homeless in Secular is woefully inadequate.

3. There exists a great need for a permanent overnight shelter for the homeless.

4. Arthur Antagonist stated that the shelter would have an adverse impact on the neighborhood, depress real estate values and make people afraid
the walk through the district at night. Arthur also said that Secular did not need any more "kook" religious organizations opening in town.

The Secular Board of Appeals granted the variance application, stating that all variance requirements had been satisfied. Arthur Antagonist has retained you to challenge the grant of the variance. However, he only wishes to proceed if he has a reasonable likelihood of prevailing. Therefore, he has asked you to write him a memorandum discussing the applicable law and applying the facts as you understand them. Please discuss the rights, duties, obligations and liabilities of the parties. Please fully explain the reasons for your conclusions.
QUESTION TWO

The Inverse Reactor Corporation ("Inverse") and Transylvania Coal Company ("Transylvania") own adjacent properties on the south side of Nollan Drive, a Massachusetts state road. Inverse operates a high-tech business on its property employing many people, while Transylvania's property, lying to the west of Inverse, is undeveloped. In 1983, Inverse sought and obtained a permit, from the Massachusetts Department of Public Works ("DPW"), allowing access to Nollan Drive at a light-controlled intersection. The traffic light is aligned with the north-south property line between Inverse and Transylvania.

The 1983 permit contemplated that the Inverse and Transylvania properties have joint access to the light controlled intersection by providing that the western side of the access connection be constructed along the northern boundary of the properties beginning at a point approximately twenty feet inside Transylvania's eastern boundary line, thus providing a twenty foot access to Transylvania's property, in addition to the portion of the connection extending eastward along the northern boundary of Inverse's property. The connection was to be constructed on a right-of-way owned by the DPW, which extends thirty feet from the edge of Nollan Drive.

Inverse failed to construct the connection in accordance with the 1983 permit. Instead, Inverse constructed the connection, as well as a private road leading to it, by eliminating the twenty feet that would have otherwise served as a connection to Transylvania's property. The result was that only vehicles utilizing the Inverse property would have access to the intersection.
Thereafter, Inverse refused to allow Transylvania to use the private road on Inverse's property to gain access to Nollan Drive. During the next several years, Transylvania and Inverse engaged in extensive litigation regarding the access problem.

While the Inverse/Transylvania litigation dragged along, the DPW determined that traffic conditions at the intersection had changed materially, requiring a redesign and issuance of a new permit. The DPW commenced administrative proceedings and alleged that the connection constructed by Inverse did not comply with the permit design plan, and that in its present state, the existing connection caused undue disruption of traffic and created safety hazards. The DPW revoked Inverse's permit issued in 1983, such revocation to become effective in ninety days. It has ordered Inverse, within sixty days, to present for approval a design for a revised connection to Nollan Drive which will allow access for both Inverse and Transylvania, and accommodate current traffic conditions in a safe and efficient manner. The order further provides that if, within ninety days, the DPW has not issued a revised permit based on plans submitted by Inverse, it shall issue a redesign permit meeting the following criteria:

1. Inverse shall reconstruct the connection in compliance with the original 1983 permit plan; plus

2. A 250-foot joint access road to the connection shall be located on the private properties of Inverse and Transylvania, which would require 22,700 square feet of "joint use area," with 13,950 square feet located on Inverse's property and 8,750 square feet on Transylvania's property.

The DPW found that there is no practical method of design that would allow two separate accesses for Inverse's and Transylvania's uses. The DPW contends that separate accesses would create a "five-lead" intersection, which would cause considerable traffic difficulties. The DPW has engineering reports that substantiate this conclusion. Inverse has proposed constructing the connection as it should have been done according to the 1983 permit plans. Inverse objects to having its private property subjected to joint use by the adjoining landowner, Transylvania. The DPW, however, believes that the 1983 design is no longer a viable solution to the traffic problem.

Please discuss the rights, duties, obligations and liabilities of the parties. Please fully explain the reasons for your conclusions.
QUESTION THREE

Benny Benevolent owns a 200 acre parcel of land in the R-1 zoning district of Stabletown, Massachusetts. Under the Stabletown zoning ordinances, enacted in 1970, only single family residential uses were permitted. However, Benny had, for the past 23 years, been using 50 acres of his property as a horse stable which boards, trains and sells horses, and provides veterinary services. He also has run a tack store, sold related riding apparel and other accessories. In 1985, Benny began planning to develop his remaining acreage into a combination harness horse racing track and 100 unit low income housing project.

Stabletown is a suburb 32 miles west of Boston with a population of about 4,200 people. Stabletown's inhabitants are 96 percent white and predominantly middle class. The town has 120 square miles of land, of which only 65 are developed. Adjacent to Stabletown is the small city of Majestic, which has a high concentration of racial minorities and low income inhabitants. Majestic is fully developed, with no further room for growth.

Benny applied to the Stabletown Board of Appeals for a special permit to erect his harness racing/low income housing project. Although numerous neighbors and citizens of Stabletown appeared to voice their objection, as well as shout racial slurs and disparaging comments about low income people, the Board of Appeals granted the special permit. Some of the neighbors appealed the grant of special permit and the Superior Court reversed the Board's decision and annulled the special permit. Benny did not appeal that decision.

Instead, Benny took steps to rezone his property from R-1 to "GB," which permitted general business, entertainment facilities and unlimited multifamily dwellings provided density requirements were satisfied. As soon as Benny's neighbors uncovered his efforts, they too took steps to amend Stabletown's zoning ordinance. The neighbors proposed a change to the ordinance which would not allow any "horse harness racing" or low and moderate income multifamily dwelling units within the entire town of Stabletown. Both petitions moved through town channels at approximately the same time.

The Finance Committee recommended that Benny's petition be adopted and that the neighbors' petition be rejected. The Planning Board agreed with the Finance Committee. The Board of Appeals recommended to reject the neighbors' petition. However, they suggested that Benny's petition be approved only if specific conditions were attached to the rezoning. These conditions were:
1. The residential portion of the project be for "moderate income" dwellings rather than for "low income" dwellings.

2. The occupants of the moderate income multifamily dwellings must be restrained from using the harness racing facility.

3. Trees and shrubbery, at least forty feet in height, be erected to surround the residential portion of the site, so that it cannot be seen from the public roads. The Board would impose no such requirement upon the harness racing portion of the project.

The two petitions came to the Stabetown town meeting for vote, with the aforementioned recommendations. The town meeting warrant contained three proposals:

1. To accept Benny's rezoning petition;

2. To accept Benny's rezoning petition with the suggested recommendations of the Board of Appeals; and

3. To accept the neighbors' petition to exclude harness racing and low or moderate income housing entirely.

The town meeting adopted Benny's petition with the conditions attached that the Board of Appeals recommended. Benny has come to you for advice. He wants to challenge the new rezoning ordinance with what he believes are unacceptable conditions. He would also like to sue the Board of Appeals individually and in their capacity as town officials. Benny believes that the Board of Appeals caused the untenable situation.

Please discuss the rights, liabilities and duties of the parties. Please fully explain the reasons for your conclusions.

END OF EXAMINATION